Supreme Court, U.S.
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No. 97-1693

In the Supreme Court of the United States

OCTOBER TERM, 1997

EVERETT HADIX, ET AL., PETITIONERS

v.

KENNETH MCGINNIS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether 18 U.S.C. 3626(b)(2) (Supp. II 1996) violates separation of powers principles.

2. Whether 18 U.S.C. 3626(b)(2) (Supp. II 1996) deprives petitioners of due process of law.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A6) is reported at 133 F.3d 940. The opinion of the district court (Pet. App. A7-A37) is reported at 947 F. Supp. 1100.

JURISDICTION

The judgment of the court of appeals was entered on January 13, 1998. The petition for a writ of certiorari was filed on April 13, 1998. The jurisdiction of the Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1980, prisoners confined in the State Prison of Southern Michigan (petitioners) filed suit against state prison officials (respondents) challenging the

conditions of their confinement. Pet. App. A3. In 1985, the district court approved a consent decree that was intended to ensure that conditions at the state prison satisfied constitutional standards. *Id.* at A9, A12.

Following the enactment of the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, Tit. VIII, §§ 801-810, 110 Stat. 1366-1377, respondents moved to terminate the prospective relief in the consent decree. Pet. App. A7-A8. In the PLRA, Congress altered the standard for the entry of prospective relief in prison conditions cases involving consent decrees. Under the PLRA, such relief "shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. 3626(a)(1)(A) (Supp. II 1996); see 18 U.S.C. 3626(c)(1) (Supp. II 1996). Section 3626(b)(2) provides for the immediate termination of relief that does not comply with that standard. It specifies that "[i]n any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. 3626(b)(2) (Supp. II 1996). At the time of the decisions below, relief could nonetheless be continued if the court made written findings based on the record that "prospective relief remains necessary to [remedy] a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly

drawn and the least intrusive means to correct the violation." 18 U.S.C. 3626(b)(3) (Supp. II 1996).[1] A party may seek termination under Section 3626(b) even if the relief "was originally granted or approved before * * * the date of the [PLRA's enactment]." PLRA, Tit. VIII, § 802(b), 110 Stat. 1370 (18 U.S.C. 3626 note).[2]

Petitioners opposed the termination motion, arguing, *inter alia*, that the PLRA's termination provisions violate separation-of-powers principles and due process guarantees. Pet. App. A9. The United States intervened in the case to defend the constitutionality of the PLRA. *Id.* at A8.

The district court denied respondents' motion for immediate termination of the decree. Pet. App. A7-A37. The court held that the PLRA's immediate termination provisions violate the separation-of-powers principles set forth in *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), by requiring federal courts to reopen final judgments. Pet. App. A28-A30.

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[1] Congress has since amended Section 3626(b)(3) to permit the continuation of relief only when a court makes findings of a "current *and* ongoing violation." Department of Justice Appropriations Act, 1998, Pub. L. No. 105-119, Tit. I, § 123(a)(2), 111 Stat. 2470 (emphasis added).

[2] Under 18 U.S.C. 3626(b)(1), all decrees, including those entered with the necessary findings, are also subject to periodic review to determine whether they remain necessary to remedy a constitutional violation. Section 3626(b)(1) provides for such review two years after the entry of relief, one year after a denial of a motion to terminate, and, in the case of pre-PLRA decrees, two years after the date of enactment. 18 U.S.C. 3626(b)(1)(A) (Supp. II 1996). In April 1998, pre-PLRA decrees, like the one at issue in this case, became subject to periodic review.

2. The court of appeals reversed. Pet. App. A1-A6. Adopting the analysis of several other circuits, the court held that the PLRA's immediate termination provisions do not require a reopening of final judgments within the meaning of *Plaut*, but instead "merely alter the prospective application of orders requiring injunctive relief." *Id.* at A5.

The court of appeals also held that Section 3626 (b)(2) does not prescribe a rule of decision in violation of *United States* v. *Klein*, 80 U.S. (13 Wall.) 128, 146-147 (1871). Pet. App. A5-A6. Once again relying on other circuit court decisions, the court concluded that the PLRA "does not dictate the result a court must reach in determining whether relief is warranted," but rather leaves with the judiciary the "interpretation and application of law to fact and the ultimate resolution of prison condition[s] cases." *Ibid.*

The court of appeals also noted that it would reject petitioner's due process challenge if that question were properly before it. Pet. App. A6 n.3. The court stated that a consent decree that is subject to future modification "cannot create a vested property right in that relief for due process purposes." *Ibid.*

ARGUMENT

1. Petitioners contend (Pet. 7-24) that Section 3626(b)(2) violates the separation-of-powers doctrine by requiring the reopening of a final judgment, in violation of *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), and by unconstitutionally prescribing a rule of decision, in violation of *United States* v. *Klein*, 80 U.S. (13 Wall.) 128, 146-147 (1871). As the court of appeals in this case correctly concluded (Pet. App. A5-A6), those contentions are without merit. Four

courts of appeals have reached the same conclusion. *Dougan* v. *Singletary*, 129 F.3d 1424 (11th Cir. 1997), petition for cert. pending, No. 97-8120; *Inmates of Suffolk County Jail* v. *Rouse*, 129 F.3d 649 (1st Cir. 1997), petition for cert. pending, No. 97-1278; *Gavin* v. *Branstad*, 122 F.3d 1081 (8th Cir. 1997), petition for cert. pending, No. 97-7420; *Plyler* v. *Moore*, 100 F.3d 365 (4th Cir. 1996), cert. denied, 117 S. Ct. 2460 (1997).[3] While a panel of the Ninth Circuit has recently held that Section 3626(b) violates separation-of-powers principles, *Taylor* v. *United States*, Nos. 97-16069 & 97-16071, 1998 WL 214578 (May 4, 1998), that decision does not provide a basis for granting review in this case. This Court denied a petition in *Plyler* raising essentially the same constitutional questions presented by petitioners in this case, and there is no reason for a different outcome here.

a. Petitioners err in contending (Pet. 7-24) that Section 3626(b)(2) violates the separation-of-powers principles set forth in *Plaut*. In *Plaut*, the Court held that Congress may not require federal courts to reopen final judgments dismissing claims for monetary relief. 514 U.S. at 218-219. *Plaut* did not suggest, however, that Congress is precluded from directing federal courts to modify *prospective* relief to the extent that such relief fails to conform to new legal standards. To the contrary, the Court reaffirmed its earlier decision in *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.)

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[3] A panel of the Second Circuit upheld the constitutionality of Section 3626(b), but construed that provision to bar only federal court enforcement of a decree. See *Benjamin* v. *Jacobson*, 124 F.3d 162, 170 (1997). On December 23, 1997, the Second Circuit granted rehearing en banc in *Benjamin*.

421 (1855), which it characterized as upholding Congress's power to "alter[] the prospective effect of injunctions entered by Article III courts." *Plaut*, 514 U.S. at 232. The critical difference is that, while a final judgment on a claim for monetary relief represents "the last word of the judicial department with regard to a particular case or controversy," *id.* at 227, an injunction is always subject to modification or termination in light of a "significant change either in factual conditions or in law." *Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992). Thus, as five courts of appeals have concluded, Congress may not require courts to reopen final judgments on claims for monetary relief, but Congress may require courts to modify prospective relief in accordance with a change in the applicable law. *Inmates of Suffolk County Jail*, 129 F.3d at 656-657; *Dougan*, 129 F.3d at 1426; *Gavin*, 122 F.3d at 1085-1088; *Plyler*, 100 F.3d at 371-372; Pet. App. A5.

As those courts have further concluded, Section 3626(b) falls on the constitutional side of that line. *Dougan*, 129 F.3d at 1426-1427; *Gavin*, 122 F.3d at 1085-1089; *Plyler*, 100 F.3d at 372; *Inmates of Suffolk County Jail*, 129 F.3d at 656-657; Pet. App. A5. Section 3626(b) applies only to "prospective relief." 18 U.S.C. 3626(b) (Supp. II 1996). It also requires a court to terminate such prospective relief only when the relief does not conform to Congress's new legal standard for awarding equitable relief in prison conditions cases. Although prior to the enactment of the PLRA, courts could enter a consent decree that provided for relief greater than that required by federal law, *Rufo*, 502 U.S. at 389, the PLRA alters judicial remedial authority in consent decree cases by providing that relief entered pursuant to a consent decree may "ex-

tend no further than necessary to correct the violation of the Federal right." 18 U.S.C. 3626(a)(1)(A) (Supp II 1996). Consistent with *Plaut* and *Wheeling & Belmont Bridge*, Congress had authority to require district courts to modify existing consent decrees so that the prospective relief in those decrees conforms to Congress's new remedial standard.

Petitioners contend (Pet. 16-19) that *Wheeling & Belmont Bridge* is distinguishable, because that case involved a change in the substantive rights of the parties, and Congress lacks authority to modify the underlying constitutional rights that prisoners seek to vindicate. That suggested distinction is unpersuasive. Although Congress lacks power to alter the scope of those constitutional rights, Congress undoubtedly had authority to limit judicial remedial authority by precluding the entry of relief that is more extensive than necessary to remedy violations of those rights. See *Yakus* v. *United States*, 321 U.S. 414, 439-440, 442 n.8 (1944) (upholding Congress's authority to restrict the remedial authority of courts and noting numerous instances in which Congress has exercised that authority). Just as Congress may require a court to alter prospective relief to conform with an otherwise constitutional change in the substantive law, Congress may require a court to alter prospective relief to conform with an otherwise constitutional change in remedial law. For purposes of separation-of-powers analysis, there is no constitutional difference between the two. In sum, Section 3626(b) is fully consistent with the separation-of-powers principles set forth in *Plaut*.

b. Petitioners' contention (Pet. 21-24) that Section 3626(b)(2) unconstitutionally prescribes a rule of decision within the meaning of *United States* v. *Klein*, 80

U.S. (13 Wall.) 128 (1871), is also without merit. As explained by this Court in *Plaut*, "[w]hatever the precise scope of *Klein*, * * * later decisions have made clear that its prohibition does not take hold when Congress 'amend[s] applicable law.'" *Plaut*, 514 U.S. at 218. Congress therefore has authority to amend the applicable law and to require courts to interpret the amended law and apply it to the facts of a case before it. In enacting the PLRA, Congress has done just that.

As noted above, prior to the enactment of the PLRA, a court could enter injunctive relief in a consent decree that extended further than necessary to remedy unconstitutional prison conditions. *Rufo*, 502 U.S. at 389. In enacting the PLRA, Congress has deprived district courts of that authority, and in so doing has amended the applicable law. Nonetheless, "[t]he interpretation and application of law to fact and the ultimate resolution of prison condition cases remain at all times with the judiciary." Pet. App. A6. Under the PLRA, relief may be terminated only when a court finds that the relief is more extensive than necessary to remedy a federal right. 18 U.S.C. 3626(b) (Supp. II 1996). Thus, *Klein* is inapposite here. See *Inmates of Suffolk County Jail*, 129 F.3d at 658; *Gavin*, 122 F.3d at 1089; *Plyler*, 100 F.3d at 372; Pet App. A5-A6.

2. Petitioners also contend (Pet. 24-25) that Section 3626(b) deprives them of vested property rights in violation of the Due Process Clause. Injunctive relief, however, is always subject to modification or termination, and that principle is fully applicable to consent decrees. *Rufo*, 502 U.S. at 378. Thus, petitioners had no vested property interest protected by the Due Process Clause in the injunctive relief em-

bodied in the consent decree. See *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 273-274 (1994) (plaintiffs do not have a vested right in an injunctive decree); see also *Inmates of Suffolk County Jail*, 129 F.3d at 658; *Dougan*, 129 F.3d at 1426-1427; *Gavin*, 122 F.3d at 1090-1091; *Plyler*, 100 F.3d at 374-375. Petitioners' contention that the PLRA violates the Due Process Clause is therefore without merit.

3. After judgment was entered below, and after this petition for certiorari was filed, a panel of the Ninth Circuit held that Section 3626(b) violates the separation-of-powers principles set forth in *Plaut* and *Klein*. *Taylor*, 1998 WL 214578, at *4-7 (*Plaut*); *id.* at *8 (*Klein*). The panel did not address the due process issue. *Id.* at *9.

Although the panel's decision in *Taylor* conflicts with the decision below and with the decisions of four other circuits, it does not furnish a ground for granting review in this case. The Solicitor General has authorized the filing of a suggestion for rehearing en banc in *Taylor*, and we have been informed that the State of Arizona also intends to seek en banc review. Because there is a reasonable possibility that the Ninth Circuit will grant en banc review in *Taylor* and eliminate the conflict in the circuits, see 9th Cir. R. 35-1, review by this Court at this time is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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